IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6749 of 1986

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6749 of 1986

MR KG VAKHARIA for Petitioner No. 1-2

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. By way of this petition the petitioner has sought a direction to the first and second respondents to take departmental action and to hold departmental inquiry against the respondent no.3 on the basis of the judicial

observations made in the judgement dated 30.8.1986.

2. This Court, on 30th December 1983, passed an order permitting the petitioner to produce written memorandum given by one Dhirubhai Patel to the Chief Minister on 29.11.1986 as stated in para 3.6 of the petition and also to state as to on what date the petitioner had orally approached the second respondent. Thereafter on 11th April 1988 the Advocate for the petitioner had made a statement that the petitioner was not in possession of the Memorandum referred to in the order dated 31.12.1986 and no affidavit was also filed as directed in the aforesaid order. Therefore the matter was admitted and the Court has directed the respondents to file their reply. However, no reply has been filed by the respondents. Even the petitioner has not moved this Court for early hearing in spite of the liberty given to the petitioner.

3. On perusing the documents produced on record of this case, as pointed out by the learned counsel for the petitioner, it seems that there are some lapses on the part of the respondent no.3 while conducting the investigation for an offence committed on 27th March 1985. However, merely on that basis this Court cannot issue any direction as sought in this petition after a period of about 19 years. It is by now a well settled principle that the State will not be allowed to conduct inquiry of stale instances. In the present case, the incident is of 27th March 1985 and after a period of 19 years it is not proper to issue any direction against any officer for an incident which has become stale.

4. Learned counsel for the petitioner has relied upon a decision in the case of N.G. Kotle Vs. Ahmedabad Municipal Corporation, reported in 1987(2) GLH 420 wherein it is held that the employer could take action against the chemist who deliberately tried to destroy the prosecution launched by the employer. However, the facts of the said case is entirely different from the present one on hand. Therefore, the above decision would not be of any assistance to the learned counsel for the petitioner. In the present case, on plain reading of the judgement in question, certain observations were made by the Judicial Magistrate, First Class that the respondent no.3 might have shown some lapse to help somebody from the department. However, the respondent authorities have not initiated any action against the respondent no.3 nor they have filed any reply in the present proceedings. In my opinion, this Court would not be justified in issuing any direction to conduct inquiry against the respondent

merely on the observations made by the Judicial Magistrate. As laid down by the Apex Court in various decisions, this is not a fit case where the extraordinary jurisdiction can be exercised after a period of about 19 years.

5. In the result, there is no substance in the petition and the same is accordingly rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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